IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16559 of 2004

Between:

Syed Akbar Hussaini S/o. Late Syed Ahmed Hussaini
R/o. H.No. 20-5-164, Kasipura, Hyderabad.

..... PETITIONER

AND

The Commissioner, Municipal Corporation of Hyderabad,
Office at Tank Bund, Hyd.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondent and his subordinate as illegal and unconstitutional in trying to demolish the petitioner's property House bearing No.20-5-164, admeasuring 62.37 sq.yards equivalent to 52.14 s. qmts situated at Khazipura Hyderabad bounded on North by H.No. 20-5-166 & Road, South Passage & 20-5-164/A, East: H.No. 20-5-167, West: Lane, without issuing prior notice as per the H.M.C. Act and pass.

For the Petitioner:MR.NAZIR AHMED KHAN

For the Respondent.: MR.G.RAMA RAO, Standing Counsel for MCH

The Court made the following :

ORDER:

Heard the learned counsel for the petitioner and learned Standing Counsel for the respondent-Corporation.

The petitioner claiming to be the absolute owner and possessor of house bearing No.20-5-164, admeasuring 62.37 sq.yards equivalent to 52.14 sq.mts situate at Kazipura, Hyderabad having obtained the same under registered gift deed dt. 27-12-2003 filed the present writ petition stating that he made some construction over an extent of 62.37 sq.yards by way of renovation and officials of the respondent-Corporation without issuing any notice and without following due procedure, damaged the property by demolishing a part of the house.

Learned counsel for the petitioner submits that as per G.O.Ms.No.423 Municipal Administration dt. 31-7-1998 a person who is having house less than 100 sq.mtrs, permission is not required under Hyderabad Municipal Corporation Act, 1955 (for short "the Act") and in view of the same, construction made by the petitioner cannot be said to be illegal and the Municipal authorities cannot demolish the same without issuing any show cause notice.

Learned Standing Counsel for the respondent-Corporation, on instructions, submits that petitioner has to submit plan and can proceed with the construction, which do not require

any sanction. He further submits that respondent will follow due procedure as contemplated under the Act while removing the unauthorized constructions ie., projection towards the road etc., if any.

In view of the same, the respondent has to issue necessary show cause notice specifying the construction so made is contrary to the building laws and after giving sufficient opportunity to the petitioner to offer his explanation and pass appropriate orders in accordance with law and till passing the such final orders the officials of the respondent-Corporation shall not demolish the structures made by the petitioner. It is always open for the petitioner to submit necessary plan as per G.O.Ms.No.423 and can obtain sanction for the construction so made thereon. If any such application is filed seeking permission, the respondent shall consider the same and pass appropriate orders within three weeks from the date of receipt of such application.

The writ petition is accordingly disposed of.

12-10-2004

kmr

To

1. The Commissioner, Municipal Corporation of Hyderabad,
Office at Tank Bund, Hyd.

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